IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Asha Devi Vs. State of Rajasthan & Others
(SB Civil Writ Petition No.3434/1999)

SB Civil Writ Petition under Article
226 of the Constitution of India.

Date of order: October 12, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Sanjay Mehrishi] for the petitioner.
Mr. Timan Singh]

Mr. R.P.Kuldeep, Addl.Govt. Advocate for State.

Mr. R.P.Singh, for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

2. In a suit filed by plaintiff respondent in the court of Assistant Collector Malpura for division of holding and permanent injunction, the defendant petitioner sought amendment of written statement by adding additional ground to the effect that the revenue court had no jurisdiction in view of registered will executed in regard to suit property. After dismissal of application the matter was taken upto the Board of Revenue. The Board while disposing revision petition observed that objection in regard to jurisdiction could be raised at any stage of suit and it was not necessary to incorporate the objection in the written statement. Pursuant to the observation of the Board the defendant made prayer in black and white to dismiss the suit. The prayer of the defendant was allowed and suit was

ordered to be dismissed. On appeal Revenue Appellate Authority allowed the appeal and remitted the matter back to decide all the issues framed on the basis of pleadings of parties. The second appeal preferred by the defendant against the judgment of Revenue Appellate Authority was dismissed and the judgment of RAA was confirmed. Against this finding of Board of Revenue that the instant writ petition has been filed by the defendant.

3. It is well settled that the amendment of written statement is to be liberally considered taking into the conduct of the defendant and the prejudice to the plaintiff. Therefore when amendment of written statement is sought, the amendment can be allowed after awarding reasonable cost to the plaintiff. Where amendment prayed for goes to the root of the matter it should not to be refused. The amendment to add additional legal grounds flowing from same facts should not be rejected.

4. Order 14 Rule 2(1) CPC mandates that notwithstanding that a case may be disposed of on a preliminary issue the court has to pronounce the judgment on all issues. The only exception to this is contained in sub-rule 2. Sub-rule 2 relaxes the mandate to a limited extent by conferring a discretion upon the court that if it is of opinion that the case or any part thereof may be disposed of “on an issue of law only”, it may try that issue first. The exercise of this discretion is further limited to the contingency that the issue to be so tried must relate to the jurisdiction of the court or a bar to the suit created by a law in force. The issue relating to the jurisdiction of the court is to be tried as preliminary issue.

5. As a result of above discussion, I dispose of the instant writ

petition in the following terms:-

(i) Amendment Application under Order 6 Rule 17 CPC seeking amendment of written statement filed by defendant petitioner is allowed and the defendant petitioner is permitted to amend the written statement.

(ii) The matter is remitted to Assistant Collector Malpura for framing issue in regard to jurisdiction on the basis of amendment made by defendant petitioner and issue so framed shall be tried as preliminary issue in view of Order 14 Rule 2 (2) CPC.

(iii) Consequently the impugned judgments of the Board as well as of Revenue Appellate Authority shall stand set aside.

(iv) The parties are directed to appear before the Assistant Collector Malpura on October 30, 2006 for seeking further instructions.

(vi) There shall be no order as to costs.

(Shiv Kumar Sharma),J.

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